IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 6524 of 2007(B)

PETITIONER:

S.SAKKIR, S/O. SAINUDDIN PILLAI,
SHASKANS, THANNIMOODU, IRINCHAYAM,
NEDUMANGAD, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.K.I.ABDUL RASHEED

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
PRINCIPAL SECRETARY, GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR,
KERALA STATE COUNCIL OF EDUCATIONAL RESEARCH
AND TRAINING, THIRUVANANTHAPURAM.

BY SRI.V.K.MUHAMMED, SC, UNIVERSITY
GOVT.PLEADER SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

W.P.(C).No.6524 OF 2007

Dated this the 6th day of March, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is a post-graduate in M.Sc. Geology with first class. He has also secured M.Phil in Hydrogeology with first class. He is now doing part time research in Hydrogeology at Cochin University. By Ext.P2, petitioner was appointed as Joint Co-ordinator in the Kerala State Open School under SCERT on contract basis till a regular hand is appointed on finalisation of special rules, staff pattern etc. The appointment was subject to ratification by the Governing body of the SCERT. Ext.P3 is the contract. Ext.P4 is the order of the Government dated 20-11-2006. It shows that Government considered that the service of the petitioner on contract basis is not necessary at present for the Kerala State Open School. Accordingly Ext.P2 order was cancelled. The Director was directed to place the

matter before the next governing body and take steps to cancel the contract in terms of the contract. Petitioner filed W.P.(C)No.31506/06. Ext.P5 is the statement filed in the said writ petition. Ext.P6 is the judgment. Therein it was found that the contention against Ext.P4 is premature. But no doubt it is held that he is entitled to continue till his service is terminated in terms of the contract. It was noted that no notice was served giving one months time. It was stated that it was not so done on account of the stay of Ext.P4. This court made it clear that petitioner can continue till his service is terminated in terms of the agreement. It was made clear that it will not stand in the way of the Director invoking Ext.P3 agreement to take action to terminate the service of the petitioner. It was also made it clear that in such an event it is open to the petitioner to raise all contentions against Ext.P4. Ext.P10 is the notice issued by the Director by which it is stated that Director is convinced that petitioner's service is not required any further and it is decided to terminate the agreement in terms of the condition 7 and 8 therein and therefore notice was given informing the petitioner

that the agreement shall stand terminated on 10-03-2007.

2. Petitioner challenges Ext.P10 and seeks mandamus to retain him till a regular hand is appointed on finalisation of the Special Rules, Staff pattern also.

3. Heard learned counsel for the petitioner Sri.K.I.Abdul Rasheed and learned Government Pleader also.

4. Learned counsel for the petitioner would contend that the order is illegal. It is submitted that on account of the implementation of the grading system in the Higher Secondary level, large number of students have been registered in the open scheme and there is need for the service of the joint co-ordinator. He relies on Exts.P7, P8 and P11. Ext.P8 evidences that there are lot of urgent work to be completed in the Kerala State Open school in a time bound manner such as preparation of self learning materials, work shop, co-ordination of PCP's and examinations. It is stated that in such circumstances it is ordered that sanction is accorded for the engagement of Smt.S.Maya Academic Associate in the head quarters for a period of 55 days from 03-01-2007 to 26-02-2007

on daily wage basis. Learned counsel for the petitioner further submits that after the expiry of the period mentioned in Ext.P8 she was allowed to continue. It is also submitted that Ext.P9 draft rules approved by the Governing body, contemplates the post of a Joint State Co-ordinator. Therefore this shows that there is indeed need for the post of Joint Co-ordinator. There is a case in the petition that Ext.P10 was issued with a malafide intention to accommodate another person. It is submitted that she is accommodated in another category. Petitioner also relies on Ext.P7 Order to point out that Dr. K.V. Renuka mentioned therein was appointed on contract basis and was allowed to continue.

5. On the other hand, learned Government Pleader would contend in the first place, that the cancellation of the contract is strictly in accordance with Ext.P3 contract and petitioner cannot have a grievance. It is further submitted that there is absolutely no proposal to appoint anyone-else as Joint State Co-ordinator, after terminating the service of petitioner, as was the case of the petitioner. As regards the appointments in Ext.P7, it is pointed

out that the appointments are to the post of Academic Co-ordinator for a period of one year on contract basis. Regarding Ext.P8 also, it is pointed out that the appointment is as Academic Associate for a period of fiftyfive days as mentioned therein. No doubt, counsel for petitioner would point out that the person mentioned in Ext.P8 is still continuing.

6. There can be no doubt that the Director was competent being a party to Ext.P3 contract, to exercise the powers available under Ext.P3 contract. It may be true that the petitioner came to be appointed, in the first place, on the recommendation of the Director in the year 2005. The tenure of the petitioner is dependent on the clear terms of the contract. Petitioner cannot claim that petitioner was appointed to a permanent post. Petitioner was appointed by Ext.P2 read with Ext.P3 contract till a person is appointed under the Special Rules. Undoubtedly, it is true that no person has been appointed in terms of the Special Rules. It is also true that the Special Rules contemplates the post of Joint Co-ordinator. But, I cannot overlook the fact that as the case stands, petitioner is not qualified in terms of the

Special Rules. Even though counsel for petitioner would contend that petitioner cannot be terminated in terms of the Agreement as his appointment is governed by Ext.P2, I find that the contention does not merit acceptance for two reasons: In the first place, he is admittedly a party to the Agreement and he cannot turn round and resile from the terms of the Agreement he has entered into. Further, the conduct of petitioner would also show that the petitioner had approached this Court earlier and this Court had disposed of the Writ Petition directing that it is for the Authority to take action in terms of the Agreement. In such circumstances, I do not think that there is any bonafides in the contentions. It is to be noted that the matter would have been different if the petitioner was a permanent appointee. Here, as already noted, petitioner was appointed on a contract basis and the contract clearly contemplates that the service can be terminated after giving one month's notice which is precisely what has been done in this case. It is essentially in the domain of the employer's wisdom to decide as to whether a particular employee's service is necessary or not. Reference to Exts.P7

and P8 by the petitioner may not be fully apposite with reference to the post of the petitioner. Admittedly, it is a different post. Further, it is to be noted that the Government Pleader has, on instructions, submitted that no person will be appointed after the termination of the service of petitioner as per the impugned notice. In such circumstances, I feel that the petitioner has not made out a case for interference. However, I make it clear that in case any person is appointed as Joint Co-ordinator otherwise than in accordance with the Special Rules, it will be open to the petitioner to seek relief and I also make it clear that this Judgment will not stand in the way of the petitioner approaching this Court.

Subject to the above observation, the Writ Petition is dismissed.

K. M. JOSEPH, JUDGE

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